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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 Case No. 14-cv-2168 BAS (RBB)

14 CHRISTOPHER KELLER, a New  
15 Hampshire Citizen; CURTIS  
16 KELLER, a New Hampshire Citizen;  
and LINDA KELLER, a New  
Hampshire Citizen,

17 Plaintiffs,

18 v.

19 NARCONON FRESH START d/b/a  
20 SUNSHINE SUMMIT LODGE;  
21 ASSOCIATION FOR BETTER  
22 LIVING AND EDUCATION  
23 INTERNATIONAL; NARCONON  
INTERNATIONAL; NARCONON  
WESTERN UNITED STATES and  
DOES 1–100, ROE Corporations I–  
X, inclusive,

24 Defendants.

**ORDER:**

1. **GRANTING IN PART WITH  
LEAVE TO AMEND AND  
DENYING IN PART  
ASSOCIATION FOR  
BETTER LIVING AND  
EDUCATION  
INTERNATIONAL’S,  
NARCONON  
INTERNATIONAL’S, AND  
NARCONON WESTERN  
UNITED STATES’ MOTION  
TO DISMISS; AND**  
2. **GRANTING IN PART WITH  
LEAVE TO AMEND AND  
DENYING IN PART  
NARCONON FRESH  
START’S MOTION TO  
DISMISS**

[ECFs 10, 11]

25  
26 On September 11, 2014, Plaintiffs Christopher Keller (“Christopher”), Curtis  
27 Keller (“Curtis”), and Linda Keller (“Linda”) commenced this suit against  
28 Defendants Narconon Fresh Start d/b/a Sunshine Summit Lodge (“Fresh Start”),

1 Association for Better Living and Education International (“ABLE”), Narconon  
 2 International (“NI”), and Narconon Western United States (“Western”) arising out  
 3 of Christopher’s experience in Fresh Start’s drug rehabilitation program. Plaintiffs  
 4 allege the following causes of action: (1) breach of contract; (2) fraud; (3)  
 5 negligent misrepresentation; (4) violation of the California Unfair Competition  
 6 Law (“UCL”, Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (5) violation of 18  
 7 U.S.C. § 2520, a federal statute prohibiting wiretapping.

8 NI, Western, and ABLE together moved to dismiss the Complaint against  
 9 them. ECF 10. Plaintiffs opposed (ECF 16) and NI, Western, and ABLE replied  
 10 (ECF 18). Fresh Start moved separately to dismiss the Complaint. ECF 11.  
 11 Plaintiffs opposed (ECF 15) and Fresh Start replied (ECF 20). The Court finds  
 12 these motions suitable for determination on the papers submitted and without oral  
 13 argument. *See* Civ. L.R. 7.1(d.1). For the following reasons, the Court **GRANTS**  
 14 **IN PART WITH LEAVE TO AMEND** and **DENIES IN PART** NI’s, Western’s,  
 15 and ABLE’s motion to dismiss, and **GRANTS IN PART WITH LEAVE TO**  
 16 **AMEND** and **DENIES IN PART** Fresh Start’s motion to dismiss. ECFs 10, 11.

## 17 **I. BACKGROUND**

18 Plaintiffs claim that on or about April 28, 2014, Linda began searching the  
 19 internet for a drug rehabilitation facility for her son, Christopher. Compl. ¶ 16,  
 20 ECF 1. They claim several unrelated websites directed them to Fresh Start  
 21 representative Josh Penn (“Penn”). *Id.* ¶¶ 17–18. Plaintiffs claim Fresh Start  
 22 recorded Linda’s calls. *Id.* at ¶ 123.

23 Penn allegedly made the following false statements: Fresh Start’s program  
 24 was scientifically and medically proven to be effective; Christopher would be  
 25 supervised by a doctor or nurse while undergoing detoxification; Fresh Start would  
 26 provide Christopher extensive drug and addiction counseling; Fresh Start staff was  
 27 properly trained to treat persons with addiction; Fresh Start’s treatment program  
 28 had a success rate of 76%; and Christopher needed to be enrolled immediately

1 because there were very limited spots available. Compl. ¶¶ 19–21, 26, 50–55.  
 2 Plaintiffs also claim Penn stated the program cost \$33,000. *Id.* at ¶ 25. Linda and  
 3 Curtis decided to place Christopher in the Fresh Start program based on these  
 4 representations. *Id.* at ¶ 22. Linda and Curtis executed the contract, which stated  
 5 that the Fresh Start program was secular in nature. *Id.* at ¶ 22, Ex. A.

6 Plaintiffs claim there were numerous empty beds when Christopher entered  
 7 the program; Christopher was not supervised by a doctor or nurse when he  
 8 underwent detoxification; Christopher shared a small dirty room with two other  
 9 people; Christopher witnessed the presence of alcohol and drugs in Fresh Start’s  
 10 facility; Christopher was aware of people having sexual relations in Fresh Start’s  
 11 facility while he was there; Fresh Start was staffed with recent patients who were  
 12 still at risk of relapse; and Christopher never received any counseling on substance  
 13 abuse. Compl. ¶¶ 27–30, 64–65. Christopher claims he left Fresh Start early  
 14 because he did not feel safe and because Fresh Start’s staff was unfit to treat him.  
 15 *Id.* at ¶ 68.

16 Plaintiffs also state that Fresh Start’s program is actually the Narconon  
 17 Treatment Program, which uses course materials designed by the Church of  
 18 Scientology. Compl. ¶¶ 31–34. Fresh Start allegedly had Christopher study  
 19 material that was copied directly out of Scientology scriptures and which had  
 20 almost no information about substance abuse. *Id.* at 34–37. Plaintiffs claim Fresh  
 21 Start directed Christopher to perform “Training Routines[,]” such as asking another  
 22 patient “do fish swim?” for hours on end. *Id.* at ¶ 39. They also claim Christopher  
 23 underwent a Scientology ritual called the “Purif.” disguised by Fresh Start as “New  
 24 Life Detoxification[.]” *Id.* at ¶¶ 42–43. Under this ritual, each day Fresh Start  
 25 required patients to exercise vigorously, ingest large dosages of niacin and a  
 26 “vitamin bomb”, and then spend five hours in a sauna at temperatures between 160  
 27 and 180 degrees Fahrenheit. *Id.* at ¶¶ 45–46. Plaintiffs assert Fresh Start is using  
 28 the Narconon program to introduce Scientology to “unwitting patients seeking

1 drug rehabilitation.” *Id.* at ¶ 60.

2 Plaintiffs further allege that Fresh Start is a mere instrumentality of NI,  
3 ABLE, and Western, and that the latter defendants “govern and control nearly  
4 every aspect of Narconon Fresh Start’s business activities.” Compl. ¶¶ 70–71.  
5 Plaintiffs claim NI requires individual centers, such as Fresh Start, to abide by  
6 manuals NI prints. *Id.* at ¶ 72. The manuals prohibit Fresh Start from demoting,  
7 transferring, or dismissing a permanent staff member without approval from NI;  
8 Fresh Start staff members may file “Job Endangerment Chit[s]” with NI if they  
9 believe Fresh Start has given orders or denied materials that make work difficult;  
10 and Fresh Start employees are required to report misconduct to NI, which is then  
11 investigated by both NI and Western. *Id.* at ¶¶ 73–76. Plaintiffs further claim that  
12 NI requires Fresh Start to send detailed weekly reports containing statistics of more  
13 than 40 metrics, which both NI and Western review. *Id.* at ¶ 78.

14 Finally, Plaintiffs state NI, Western, and ABLE are intimately involved in  
15 Fresh Start’s operations in the following ways: they require Fresh Start to seek  
16 their approval before circulating promotional materials and starting new websites;  
17 they assist Fresh Start in creating advertising materials and dictate the materials’  
18 content; they conduct “tech inspections” at Fresh Start to determine whether Fresh  
19 Start is delivering the Narconon program correctly; they work with individual  
20 centers like Fresh Start on legal issues, including patient requests for refunds and  
21 complaints to the Better Business Bureau; and they exercise final authority over  
22 Fresh Start relating to hiring and firing, delivery of services, finances, advertising,  
23 training, and general operations. *Id.* at ¶¶ 79–80, 83–88.

## 24 **II. LEGAL STANDARD**

25 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
26 Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed.  
27 R. Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). The  
28 court must accept all factual allegations pleaded in the complaint as true and must

1 construe them and draw all reasonable inferences from them in favor of the  
 2 nonmoving party. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir.  
 3 1996). To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed  
 4 factual allegations, rather, it must plead “enough facts to state a claim to relief that  
 5 is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A  
 6 claim has “facial plausibility when the plaintiff pleads factual content that allows  
 7 the court to draw the reasonable inference that the defendant is liable for the  
 8 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*,  
 9 550 U.S. at 556). “Where a complaint pleads facts that are ‘merely consistent  
 10 with’ a defendant’s liability, it stops short of the line between possibility and  
 11 plausibility of ‘entitlement to relief.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*,  
 12 550 U.S. at 557).

13 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to  
 14 relief’ requires more than labels and conclusions, and a formulaic recitation of the  
 15 elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (quoting  
 16 *Papasan v. Allain*, 478 U.S. 265, 286 (1986)) (alteration in original). A court need  
 17 not accept “legal conclusions” as true. *Iqbal*, 556 U.S. at 678. Despite the  
 18 deference the court must pay to the plaintiff’s allegations, it is not proper for the  
 19 court to assume that “the [plaintiff] can prove facts that [he or she] has not alleged  
 20 or that defendants have violated the . . . laws in ways that have not been alleged.”  
 21 *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459  
 22 U.S. 519, 526 (1983).

23 Generally, courts may not consider material outside the complaint when  
 24 ruling on a motion to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*,  
 25 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). However, documents specifically  
 26 identified in the complaint whose authenticity is not questioned by parties may also  
 27 be considered. *Fecht v. Price Co.*, 70 F.3d 1078, 1080 n.1 (9th Cir. 1995)  
 28 (superceded by statutes on other grounds). Moreover, the court may consider the

1 full text of those documents, even when the complaint quotes only selected  
 2 portions. *Id.* It may also consider material properly subject to judicial notice  
 3 without converting the motion into one for summary judgment. *Barron v. Reich*,  
 4 13 F.3d 1370, 1377 (9th Cir. 1994).

5 As a general rule, a court freely grants leave to amend a dismissed  
 6 complaint. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when  
 7 “the court determines that the allegation of other facts consistent with the  
 8 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib.*  
 9 *Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

### 10 **III. DISCUSSION<sup>1</sup>**

#### 11 *A. Plaintiffs Have Alleged an Agency Relationship Between Defendants*

12 NI, Western, and ABLE move for dismissal of all claims against them,  
 13 arguing Plaintiffs’ experience was solely with Fresh Start and that the Complaint’s  
 14 allegations are insufficient to establish an agency relationship between them and  
 15 Fresh Start. ECF 10-1, 9–12. Defendants rely on *Patterson v. Domino’s Pizza*,  
 16 *LLC*, 60 Cal.4th 474 (2014) for support.

17 In *Patterson*, the California Supreme Court discussed principals of agency at  
 18 length in the context of a franchisor-franchisee relationship. Under California law,  
 19 a franchisor is the franchisee’s principal when the franchisor has the right to  
 20 control the “means and manner” of the franchisee’s operations. *Patterson*, 60  
 21 Cal.4th at 495 (quoting *Cislaw v. Southland Corp.*, 4 Cal. App. 4th 1284, 1288  
 22 (1992)). “[C]ontrol over factors such as hiring, direction, supervision, discipline,  
 23 discharge, and relevant day-to-day aspects of the workplace behavior of the  
 24 franchisee's employees[]” support a finding of agency. *Id.* at 497–98. Both

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26 <sup>1</sup> Fresh Start requests the Court take judicial notice of an order written by Judge Gonzalo Curiel in  
 27 a similar case. ECF 11-2. The Court **GRANTS** Fresh Start’s request. ECF 11-2. *See* Fed. R. Evid.  
 28 201(b)(2) (a court may take judicial notice of a fact that “can be accurately and readily determined  
 from sources whose accuracy cannot reasonably be questioned”); *In re Countrywide Fin. Corp.*  
*Mortg.-Backed Sec. Litig.*, 966 F.Supp.2d 1018, 1024 n.4 (C.D. Cal 2013).

1 Plaintiffs and Defendants agree the principles articulated in *Patterson* are  
 2 applicable here. ECF 10-1, 10-12; ECF 16, 4-7.

3 Plaintiffs allege the following: (1) NI has ultimate control over the  
 4 demotion, transfer, or dismissal of a permanent Fresh Start employee; (2) Fresh  
 5 Start employees may file grievances with NI concerning misconduct by Fresh  
 6 Start; (3) NI and Western investigate reported misconduct concerning Fresh Start;  
 7 (4) NI requires Fresh Start to send detailed weekly reports, which are reviewed by  
 8 NI and Western; (5) ABLE, NI, and Western require Fresh Start to seek  
 9 authorization before circulating new advertising; (6) ABLE, NI, and Western  
 10 conduct “tech inspections” at Fresh Start to ensure employees are correctly  
 11 conducting the Narconon program; and (7) ABLE, NI, and Western instruct Fresh  
 12 Start employees exactly how they want Fresh Start to provide services. Accepting  
 13 these allegations as true and drawing all inferences in favor of Plaintiffs, the  
 14 Complaint sufficiently alleges that ABLE, NI, and Western control the “means and  
 15 manner” of Fresh Start’s operations. Plaintiffs have thus alleged an agency  
 16 relationship between ABLE, NI, Western and Fresh Start.

17 *B. Plaintiffs’ Breach of Contract Claim*

18 ABLE, NI, and Western argue that Plaintiffs’ breach of contract claim must  
 19 be dismissed as to them because they were not parties to the contract and because  
 20 Plaintiffs did not adequately allege an agency relationship between them and Fresh  
 21 Start. ECF 10-1, 12-13. They further argue that even if they are principals of Fresh  
 22 Start, they are not liable because the contract did not contain their names or state  
 23 the “fact of agency.” *Id.* (citing *Van Haaren v. Whitmore*, 2 Cal.App.2d 632, 634  
 24 (1934)). As discussed above, Plaintiffs have adequately alleged an agency  
 25 relationship between the agent, Fresh Start, and the principals, ABLE, NI, and  
 26 Western.<sup>2</sup> In *Van Haaren*, individual defendants were liable for the unpaid balance  
 27

28 <sup>2</sup> ABLE, NI, and Western also reiterate their argument that there is no agency relationship between  
 them and Fresh Start. The Court has already addressed this argument. *See supra*, Section III.A.

1 of a note. These individual defendants claimed they had acted as agents of a  
 2 principal, but because the note did not explicitly refer to the existence of the  
 3 principal, they were individually liable for the note's payment. However, *Van*  
 4 *Haaren* does not apply to the present case. While *Van Haaren* does support finding  
 5 agents liable for a principal's failure to pay, it is silent on the principal's liability.

6 Fresh Start argues that Christopher has no standing to bring the breach of  
 7 contract claim because he was not a party to the contract. ECF 11-1, 5–6. Fresh  
 8 Start also argues Curtis and Linda have not alleged an injury, an essential element  
 9 of breach of contract. *Id.* First, a third party beneficiary has standing to sue for  
 10 enforcement or breach of a contract. *See H.N. and Frances C. Berger Found. v.*  
 11 *Perez*, 218 Cal. App. 4th 37, 43 (2013). The contract here was clearly made for the  
 12 benefit of Christopher. Second, the Complaint states the treatment program cost  
 13 \$33,000. Because Fresh Start allegedly did not perform on the contract, Linda and  
 14 Curtis may recover for Fresh Start's breach.

15 Plaintiffs' Complaint states a claim for breach of contract. Defendants'  
 16 motions to dismiss Plaintiffs' breach of contract claim are **DENIED**. ECFs 10, 11.

17 C. Plaintiffs' Fraud Claim

18 All Defendants contend that Plaintiffs have failed to meet Federal Rule of  
 19 Civil Procedure 9(b)'s heightened pleading requirements for fraud claims. ECF 10-  
 20 1, 13–16; ECF 11-1, 6–10. The elements of fraud include (1) a misrepresentation;  
 21 (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5)  
 22 resulting damage. *Khan v. CitiMortgage, Inc.*, 975 F. Supp. 2d 1127, 1139 (E.D.  
 23 Cal. 2013). To meet Rule 9(b)'s requirements, Plaintiffs must have pled the “who,  
 24 what, when, where, and how[,]” of the misrepresentations, so that Defendants are  
 25 aware of the particular misconduct alleged and can prepare an adequate response.  
 26 *Id.* at 1139–40 (citations omitted).

27 Plaintiffs allege Fresh Start employee Josh Penn made the previously  
 28 described misrepresentations during a phone call made around April 28, 2014.

1 Compl. ¶¶ 16–21, 96. These allegations satisfy the “who, what, when, where, and  
 2 how” of the fraud. Plaintiffs further allege that Penn knowingly made the  
 3 misrepresentations, and that they relied on them, suffering injury as a result.  
 4 Compl. ¶¶ 22, 97–100. These allegations are sufficient to put Defendants on notice  
 5 of their alleged misconduct. Plaintiffs have therefore adequately pled their fraud  
 6 claim. *See Amato v. Narconon Fresh Start*, No. 3:14–cv–0588, 2014 WL 5390196,  
 7 at \*5–\*6 (S.D. Cal. Oct. 23, 2014) (applying similar analysis to similar facts).  
 8 Defendants’ motions to dismiss Plaintiff’s fraud claim are **DENIED**. ECFs 10, 11.

9 *D. Plaintiffs’ Negligent Misrepresentation Claim*

10 “The elements of negligent misrepresentation are (1) the misrepresentation  
 11 of a past or existing material fact, (2) without reasonable ground for believing it to  
 12 be true, (3) with intent to induce another’s reliance on the fact misrepresented, (4)  
 13 justifiable reliance on the misrepresentation, and (5) resulting damage.” *Apollo*  
 14 *Capital Fund, LLC v. Roth Capital Partners, LLC*, 158 Cal. App. 4th 226, 243  
 15 (2007). Defendants argue Plaintiffs have failed to allege that the misrepresentations  
 16 were made without reasonable ground for believing them to be true. ECF 10-1, 17;  
 17 ECF 11-1, 8–9.

18 Plaintiffs allege that Penn falsely represented that the treatment program had  
 19 a 70% to 80% success rate and that Penn directed them to Fresh Start’s website,  
 20 which stated the treatment program had a 76% success rate. Compl. ¶ 21. Plaintiffs  
 21 further allege that ABLE, NI, and Western must authorize all of Fresh Start’s  
 22 advertising and websites before they “go live.” *Id.* at ¶ 79. Finally, Plaintiffs allege  
 23 that an NI official had knowledge in 2009 that the 76% success rate claim was not  
 24 scientifically proven. *Id.* at ¶ 54. Taken together, these allegations are sufficient to  
 25 support Plaintiffs’ negligent misrepresentation claim because NI had no reasonable  
 26 basis to believe its success rate was 76%, and it authorized Fresh Start to make that  
 27 claim on its website. Plaintiffs have thus pled sufficient facts to support this claim.  
 28 Defendants’ motions to dismiss Plaintiffs’ negligent misrepresentation claim are

1 therefore **DENIED**. ECFs 10, 11.

2 *E. Plaintiffs' UCL Claim*

3 Defendants argue Plaintiffs lack standing to bring their UCL claim. ECF 10-  
4 1, 18–20. To have standing to bring a UCL claim, a person must have “suffered  
5 injury in fact and[ ]lost money or property as a result of the unfair competition.”  
6 Cal. Bus. & Prof. Code § 17204. Under the express language of the California  
7 Business and Professions Code, Christopher does not have standing to bring a UCL  
8 claim because the Complaint contains no allegations that he “lost money or  
9 property as a result” of Defendant’s conduct. *Id.* However, Plaintiffs have alleged  
10 that Curtis and Linda lost \$33,000. Compl. ¶ 25. They therefore have standing to  
11 bring the UCL claim.

12 The remedies available under the UCL are limited to injunctive relief and  
13 restitution. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1144  
14 (2003) (citations omitted). Standing for injunctive relief requires plaintiffs to show  
15 an actual injury and “a real and immediate threat” the injury will occur again.  
16 *Bates v. United Postal Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (citations  
17 omitted). Plaintiffs lack standing to pursue injunctive relief because they do not  
18 allege there is any risk they will use Defendants’ services again. This does not  
19 require dismissal of Plaintiffs’ UCL claim, however, because Curtis and Linda may  
20 seek restitution.

21 Christopher lacks standing to bring the UCL claim. Curtis and Linda possess  
22 standing to bring the UCL claim seeking restitution. Accordingly, Defendants’  
23 motions to dismiss Curtis’ and Linda’s UCL claim are **DENIED**. ECFs 10, 11.

24 *F. Plaintiffs' Claim for Violation of 18 U.S.C. § 2520*

25 Title 18, Section 2520 of the United States Code provides: “any person  
26 whose wire, oral, or electronic communication is intercepted, disclosed, or  
27 intentionally used *in violation of this chapter* may in a civil action recover from the  
28 person or entity. . . .” (emphasis added). It is not “unlawful under th[e same]

chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act.” 18 U.S.C. § 2511(2)(d).

Under the express language of these statutes, only one party need consent to recording. Plaintiffs do not allege that Defendants did not consent to recording. Further, Plaintiffs do not allege that Defendants recorded calls for the purpose of committing a criminal or tortious act. They do allege that Defendants recorded the calls so they could instruct employees on how to improve their sales technique, which is not a criminal or tortious purpose. *See* Compl. ¶ 121. Accordingly, Plaintiffs have failed to state a claim under 18 U.S.C. § 2520 and Defendants’ motions are **GRANTED** as to this claim. ECFs 10, 11.


#### **IV. CONCLUSION & ORDER**

In light of the foregoing, the Court **ORDERS**:

1. Christopher’s UCL claim is **DISMISSED** with leave to amend;
2. Plaintiffs’ UCL injunctive relief is **DISMISSED** with leave to amend;
3. Plaintiffs’ claim for violation of 18 U.S.C. 2520 is **DISMISSED** with leave to amend; and
4. Defendants’ motions are otherwise **DENIED**. ECFs 10, 11.
5. Plaintiff’s Complaint (ECF 1) remains operative except for the dismissed claims, but Plaintiffs may amend it **within 21 days** of this Order.

**IT IS SO ORDERED.**

Dated: April 22, 2015

  
 Hon. Cynthia Bashant  
 United States District Judge